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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,239	09/23/2005	Alexander W. M. Bailey	080422-000000US	2209
20350 7590 06/19/2008 TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834				
EXAMINER				
TRAN, HANH VAN				
ART UNIT		PAPER NUMBER		
3637				
MAIL DATE		DELIVERY MODE		
06/19/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/550,239

Applicant(s)

BAILEY, ALEXANDER W. M.

Examiner

HANH V. TRAN

Art Unit

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2 and 4-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2, 4-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

1. This is the Final Office Action from the examiner in charge of this application in response to applicant's amendment dated 2/25/2008.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 2, 9-14, 16-18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over PCT/AU85/00159 to Dash in view of USP 1,360,720 to Brown et al.

Dash discloses a metal pallet comprising a top deck 40, a bottom deck 21, at least two elongate bearers 13 securing said decks together, each bearer having a first portion and a second portion (wherein the first and second portions are defined as the left and right hand sides of the bearer 13 in the assembled configuration such as shown in Fig 4), each portion extends between the decks and has a top web 35 and a bottom web 35 connected to a central web 32 by inclined portions 33-34, wherein at least one

edge includes, such as shown in Fig 1, a cover plate, a stiffener and an end cap, wherein each said top and bottom deck is of a profiled configuration, wherein said profiled configuration are corrugations. The differences being that Dash fails to clearly disclose each bearer has a first and a second longitudinally extending bearer portions, with each portion being secured to said decks and extending separately transversely between said decks and wherein each portion has a longitudinally extending top web secured to the top deck, a longitudinally extending bottom web secured to the bottom deck, a longitudinally extending central web extending generally normal to said decks, and longitudinally extending inclined web portions securing the central web to the top and bottom webs, each inclined web portion being inclined to the decks by an acute angle, the central webs are releasably securable together.

Brown et al teaches the idea of providing a supporting bar/bearer comprising, such as shown in Figs 1 and 4, a first and a second longitudinally extending bearer portion (1,2), with each portion being secured to upper and lower decks (3,4) and extending separately transversely between said decks and wherein each portion has a longitudinally extending top web secured to the top deck 3, a longitudinally extending bottom web secured to the bottom deck 4, a longitudinally extending central web 5 extending generally normal to said decks and releasably securable together, and longitudinally extending inclined web portions securing the central web to the top and bottom webs, each inclined web portion being inclined to the decks by an acute angle; wherein the bar's structure provides a strong, yet lightweight supporting bar. Therefore, it would have been obvious to modify each bearer of Dash by having the bearer

comprising a first and a second longitudinally extending bearer portions with each portion being secured to upper and lower decks and extending separately transversely between said decks and wherein each portion has a longitudinally extending top web secured to the top deck, a longitudinally extending bottom web secured to the bottom deck, a longitudinally extending central web extending generally normal to said decks and releasably securable together, and longitudinally extending inclined web portions securing the central web to the top and bottom webs, each inclined web portion being inclined to the decks by an acute angle in order to provide a strong, yet lightweight supporting bar, as taught by Brown et al, since both teach alternate conventional supporting bar structure, used for the same intended purpose of load-supported, thereby providing structure as claimed.

5. Claims 4-8, and 15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Dash, as modified, as applied to claim 18 above, and further in view of USP 4,240,360 to Sanders et al.

Dash, as modified, discloses all the elements as discussed above except for the webs are releasably securable to the decks by fastening means of threaded fasteners or rivets, and a sheet material secured to at least one of said decks.

Sanders teaches the idea of using releasable fastening means of rivets or removable clips for securing elements of a metal; wherein the releasable fastening means allows the pallet to knock-down for spaced saving purpose. Therefore, it would have been obvious to modify the structure of Dash, as modified, by providing releasable fastening means of threaded fasteners or rivets in order to allow the pallet to knock-

down for spaced saving purpose, as taught by Sanders et al, since both teach alternate conventional pallet structure, used for the same intended purpose, thereby providing structure as claimed. In regard to a sheet secured to at least one of said decks, the examiner takes the position that it would have been obvious and well within the level of one skill in the art to provide at least one of the decks with a sheet secured thereto in order to provide a flat supporting deck, when so is desired. Further, it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art.

Response to Arguments

6. Applicant's arguments filed 2/25/2008 have been fully considered but they are not persuasive. In response to applicant's argument on page 5 of the Amendment that it would not be obvious to a person of ordinary skill in the pallet art to modify the pallet of Dash in view of Brown, since Brown is drawn to a spar for an aircraft which is subject to completely different loads than that of a pallet, the examiner respectfully takes the position that although Brown is not drawn to a pallet per se, both references are drawn to a load supporting panel construction having reinforcement/bearer portions between two spaced apart panels/decks, thus would have been obvious to a person of ordinary skill in the art.

7. In response to applicant's argument on page 5 that "there is no showing or suggestion within Brown et al to modify the spar for use in a pallet, nor any mention of the need to support a point load", the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary

reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

8. In response to applicant's argument on pages 5 and 6 that Dash either alone or in combination with Brown et al fails to teach the limitation in claim 2 of the central webs being "releasably securable together", the examiner respectfully takes the position that the claimed language fails to provide adequate structural limitations to the claim in order to distinguish from the prior art of record, and that the central webs 5 of Brown are secured together and certainly are "releasably securable together".

9. In response to applicant's arguments on pages 5-6 that Dash is drawn to a fixed pallet, while applicant's invention is drawn to pallet having detachable components, the examiner respectfully takes the position that the claimed language must be distinguished from the prior art of record.

10. In response to applicant's argument on page 6 that "there is no motivation in Dash to modify the structure in accordance with that of the present invention", the examiner respectfully takes the position that Dash is the primary reference, as such, any teaching, suggestion, or motivation to do so can be found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

11. In response to applicant's argument on page 6 that Dash, as modified to include detachable parts, "would not operate correctly and would fail under load because of the designed load structure of Dash (see, e.g., page 4, lines 1-24)", the examiner

respectfully takes the position that said argument amounts to a general allegation without providing any clear scientific results or experimentation to support applicant's argument.

12. In response to applicant's argument on page 7 that the motivation provided in the Office Action for modifying Dash in view of Sanders is incompatible with the teachings of Dash, since Dash is drawn to a fixed, welded pallet, while Sanders teaches construction of pallets that can be nested one on top of the other, the examiner respectfully takes the position that, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HANH V. TRAN whose telephone number is (571)272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HVT
June 16, 2008

/Hanh V. Tran/
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